



# NASA Real Property

Elements of a LOI for an Out-grant with  
Non-Federal Third Party for Use of NASA  
Real Property

## User Reference Guide

June 9, 2016



## 1. Purpose and Use

---

### Overview

NASA has authority under the Space Act for the acquisition and management of the real property under its control. Therefore, NASA has the potential to enter into agreements with third party private and public entities who desire to use NASA's underutilized real property and infrastructure. This document is for use with private third party entities (Non-Federal).

### Authorities

The Space Act is NASA's authorizing legislation. It authorizes NASA to conduct activities related to real property including out-granting real property under NASA's control to others. Section 20113 (c) provides this authorization. These authorities are further described in the associated Code of Federal Regulations (CFR) specifically, 14CFR1204.501, 14CFR1204.503, and 14CFR1204.504. NASA is provided additional authority in the Space Act, Section 20145, which provides for out-lease any non-excess property for fair market value. This is also known as Enhanced Use Leasing (EUL). In addition, NASA may out-grant real property under the authorities of the National Historic Preservation Act (NHPA) and the Commercial Space Launch Act. The NHPA allows NASA to out-grant historic property and retain the proceeds as provided in the Act. The Commercial Space Launch Act governs out-grants of space launch assets and contracts for the sale of launch services at a Center with such capabilities. The NASA regulations regarding the exercise of these authorities are found in NASA NPR 8800.15.

### Purpose

Prior to the negotiation of formal legal documents, NASA and a third party often reach a non-binding understanding of the business and operational terms called Letters of Intent ("LOI") or "Term Sheets" that guide the development of the legal documents. The purpose of this LOI User Reference Guide is to help NASA Centers prepare non-binding agreements with potential third party entities prior to spending time and resources preparing and entering into formal agreements. The benefit of using consistent terms wherever appropriate will allow NASA to be more consistent in its approach to leveraging the value of underutilized property and provide a streamlined NASA document preparation and review.

### How to use this User Reference Guide

The terms included in this User Reference Guide are common to the private sector, however every transaction, Center, and situation is unique. The level of detail required may vary depending on the situation. There may be terms that need to be added or terms that need to be deleted because they do not apply. Users of this document are encouraged to collaborate with appropriate legal staff at each Center. Users should copy the appropriate elements from



Section 2 into a letter format, fill in the appropriate information in brackets (shown as [XXX] in Section 2) and delete or re-word elements to ensure that the LOI is consistent with the specific circumstances and transaction intent.

The template is divided into six basic sections:

1. Introduction, Authority, and Justification (overview of the purpose of the LOI)
2. Premises (description of the premises, permitted uses, and potential changes to the Premises)
3. Business and economic terms (key terms of the business agreement)
4. Risks and responsibilities (allocation of liabilities and insurance)
5. Use of NASA logo and property (description of allowable use of NASA brand)
6. Conclusion and declaration of non-binding LOI (signature pages, and definition of next steps)

## 2. Sample Letter and Terms

---

[DATE]

[NAME]

[COMPANY / ORGANIZATION]

[ADDRESS]

[CITY, STATE, ZIP CODE]

RE: Non-Binding Letter of Intent

### 1. Introduction, authority, justification

[Formal Tenant Name] ("Tenant") has requested that the National Aeronautics and Space Administration ("NASA") provide a non-binding proposal to lease the premises described below. Upon your approval of this proposal, NASA will begin drafting a formal agreement (the "Lease") based on the terms set forth below:

- 1.1. **Authority:** Pursuant to the authority of Section 203(c)(3) of the National Aeronautics and Space Act (51 U.S.C. §20113(c)(1)) NASA will negotiate a Lease with Tenant (or



Under the authority of NASA's "enhanced use leasing" program under the Space Act (51 U.S.C. §20145....

(and/or)

Under the authority of the National Historic Preservation Act (16 U.S.C. §470h-3)....

## 2. Premises

The items below describe the mutual understanding of the premises.

- 2.1. **Premises (location and size):** Tenant shall lease approximately [XXX] square feet of space at [location] per the attached plan.

(or)

The Premises will initially consist of approximately XXX square feet. The Premises will consist of rooms (XXX).

- 2.2. **Condition of Premises:** Tenant will accept the Premises in "as-is" condition and NASA will make no representations or warranties as to Premises, including as to the suitability of the Premises for Tenant's purposes. NASA will not make any improvements to the Premises prior to or after occupancy. NASA and Tenant shall conduct a walk-through to document the condition of the Premises prior to occupancy. At least one representative from NASA's operations and maintenance division shall be present during the walk-through.

- 2.3. **Use of Premises:** Tenant will use and occupy the Premises solely for (XXX). Tenant's use of Premises must be lawfully permissible.

(or)

Tenant may use the Premises for general office purposes, for purposes incidental thereto. Tenant's use of Premises must be lawfully permissible.

- 2.4. **Alternate Premises:** NASA reserves the right to relocate Tenant to new premises containing approximately the same area as the Premises. If NASA exercises such right, the amount of monthly gross rent (and other applicable amendment terms) shall be adjusted based on the area of the new premises.

- 2.5. **Alterations, Modifications and Additions to the Premises:** Any alterations in the Premises are subject to NASA's prior written approval, and must comply with applicable laws, regulations, National Codes, Center Codes and Standards, guidelines and policies. NASA, for reasons of public safety, shall have the ability to review and



- approve all facility alterations/modifications. The Agency has the responsibility to 1) comply with all applicable federal and local laws (Section 106, NEPA, Disposition of Salvage Materials, Recyclable Wastes, Economy Act, Hazardous Operations, etc.), national codes and standards, and statutes on public safety, environment; and 2) have sufficient understanding of the facility configurations and operations so the Center can respond to emergencies ensure safety of the site. All facility modifications (regardless of size and funding source) shall go through normal Construction of Facilities (CoF) approval process. Any improvements over \$1M must be reviewed by NASA HQ Facilities Engineering Division; and shall comply with NPR 8820. Modifications with estimated cost of \$20M+ shall require MSC approval; \$100M+ shall require EC approval. Include utility agreements to define Tenant's operations & maintenance responsibilities. Consideration should be given for commensurate compensation to the Agency for Tenant's use of roadways and utility distribution systems (water, sewer, electrical, data, etc.). General and Administrative fees must be incorporated in the agreement to cover maintenance cost. Tenant shall be responsible for returning the property to its original condition or better. Consideration be given to require Tenant to establish an escrow account to fund the cost to return the facility to its original condition and demolition of unauthorized construction. Include a site plan in the agreement to clearly delineate physical limits of the agreement and especially when multiple facilities are affected. All facilities modifications, engineering and design work shall be completed and stamped by a firm licensed to conduct engineering consulting work in the state of the work site.
- 2.6. **Restoration:** At the end of the term, Tenant shall restore Premises to its original condition unless otherwise mutually agreed in writing by NASA and Tenant. NASA and Tenant shall conduct a walk-through to document the condition of the Premises 20 days prior to Tenant vacating Premises. At least one representative from NASA's operations and maintenance division shall be present during the walk-through.
- 2.7. **Parking:** NASA will provide Tenant the right to use [XXX] parking spaces. Tenant shall be charged the prevailing market rate for the parking, which may be subject to change from time-to-time.
- 2.8. **Tenant Signage:** Subject to NASA's approval, in NASA's sole judgment, Tenant's signage may be provided at Tenant's expense. Tenant must submit proposed Tenant Signage designs to NASA for consideration.
- 2.9. **NASA Personal Property:** NASA will provide Tenant with [list or describe all personal property, furniture and equipment] (collectively, the "Personal Property").



Tenant will maintain the Personal Property in good condition during the term of the Lease, reasonable wear and tear excepted. All Personal Property shall remain property of the U.S. Government, and shall remain at the Premises at the end of the term. NASA and Tenant will attach a list of Government personal property to the Agreement which will be updated from time to time if necessary. If Tenant provides personal property in the Premises, Tenant shall remove the Personal Property at the end of the Term unless mutually agreed in writing between NASA and Tenant.

- 2.10. **NASA's Right to Enter Premises:** NASA may enter the Premises at all reasonable times upon twenty four (24) hour notice except in emergency.

(or)

Reasonable Access and Inspection. Government access to premises for the purposes of reviewing, inspecting and evaluating the Partner's compliance to the agreement.

- 2.11. **Maintenance and Repair:** Tenant shall maintain the Premises in its current or improved condition at Tenant's sole cost and expense. If Tenant fails to maintain facility, after a 20 day notice NASA may either 1) terminate the Agreement or 2) make any required repairs and receive reimbursement from Tenant at NASA's direct cost for making such repairs.

- 2.12. **Cleaning Specifications:** Tenant is responsible for cleaning services and maintaining Premises is professional level of cleanliness at Tenant's sole cost.

(or)

Tenant shall reimburse NASA for cleaning and janitorial fees as a Demand Service.

### 3. Business and economic terms

Below are the basic business and economic terms that form the business agreement between NASA and Tenant. These terms will be further described in the Lease.

- 3.1. **Lease Commencement Date:** NASA and Tenant intend to commence the Lease as of [XXX]. The actual commencement date will be defined in the agreement.

- 3.2. **Base Term:** The initial term of the Lease will be for [XXX] months and will expire on [XXX].



- 3.3. **Base Rent:** Tenant will pay to NASA, in advance monthly and without abatement, offset, deduction or counterclaim of any kind, monthly Base rent of [\$XXX] per month, paid in advance.

(or)

Tenant shall provide “in-kind consideration” of similar value. [Describe the in-kind consideration in broad terms so that the comparative value can be assessed.]

- 3.4. **Base Rent Escalation Rate:** Base rent shall be increased annually by [XXX] percent [(XXX %)] on each anniversary of the Commencement Date throughout the term. If the term is longer than sixty (60) months, the market value may be adjusted to reflect an updated value prior to month 60.

- 3.5. **Services Provided by NASA to Tenant and Methodology for Charges:** NASA will provide services, which will include but may not be limited to: (a) common grounds and road maintenance; (b) security; (c) structural fire response and periodic Fire Marshall inspections; (d) first responder operations (Hazardous Material); (e) utility infrastructure systems maintenance and repair; and (f) routine administrative support and management oversight (i.e. environmental oversight) attributable to the Premises. The cost of these services is included in the monthly gross rent.

(or)

NASA will provide standard utility and maintenance services to the Premises, the cost of which is included in the monthly gross rent. In addition to the monthly Base rent, Tenant will reimburse NASA for limited janitorial services at the rate of [\$XXX] per month. If Utilities at the Premises are not currently metered separately, Tenant at Tenant’s cost shall install meters to NASA’s specifications.

- 3.6. **Communications Services:** NASA provides no communications services (e.g., Internet and telephone service). Tenant shall make arrangements with a service provider of its choosing and pay directly for the same.

- 3.7. **Special/Demand Services:** Special utility needs, all alterations or improvements to the Premises, and all other service requests shall be “Demand Services” and will be subject to separate negotiation. Tenant will reimburse NASA for all Demand Services based on NASA’s actual costs, and will be paid monthly in advance.

- 3.8. **Payment:** Tenant will pay to NASA monthly gross rent and Demand Services charges (if any) for the Premises will be charged, and the security deposit will be collected,



beginning on the Commencement Date. If Tenant does not remit payment to NASA prior to 20 days after due date, Tenant shall be in Default (consequences to be addressed in the Agreement).

- 3.9. **Assignment and Subletting:** No assignment or subletting will be permitted.
- 3.10. **Termination:** In accordance with NASA regulations, NASA may terminate the Lease without cost to the Government, with at least 30 days prior notice, if the applicable NASA officials determine that the national space program, the national defense or the public welfare require termination of the Lease. Upon termination, Tenant is required to remove all personal property, repair any damage to the Premises, and in general leave the Premises in equal to or better condition than the condition at commencement.
- 3.11. **Non-Interference with NASA Activities:** NASA has the right to delay or temporarily stop Tenant from use of the Premises if the applicable NASA officials determine that it is required due to the national space program, the national defense or the public welfare. NASA is not liable for damages as a result of suspension of operations for interference with NASA operations. Tenant shall not be responsible for paying Base Rent for the period of time that NASA does not allow Tenant to use the Premises.
- 3.12. **Options for Extension of Term:** Tenant will have no rights associated with an extension of term.
- (or)
- The Government has the unilateral right to extend the Term by [XXX] months.
- (or)
- This agreement can be extended by [XXX] months by mutual agreement in writing between NASA and Tenant.
- 3.13. **Real Estate Brokerage Fees:** NASA and Tenant represent that no firm is due a brokerage commission to be paid by NASA.
- 3.14. **Security Deposit:** Tenant shall make a security deposit of [\$XXX] which shall be deposited into an escrow account.

(or)





Tenant shall provide a security deposit in the form of a Performance Bond (or other instrument).

3.15. **Financial Statements:** The terms of this non-binding LOI are subject to the NASA's review of Tenant's financial statements. Tenant shall submit financial statements to NASA along with a letter from Tenant and a reputable third party (i.e. bank, accounting firm, etc.) that certifies that the financial statements are true and accurate.

3.16. **Holdover:** Tenant shall not be allowed to holdover.

#### 4. Risks and responsibilities

Below are some of the crucial obligations for NASA and Tenant that manage risks and responsibilities for Tenant use of NASA property. These terms will be further described in the Lease.

4.1. **Allocation of Liability:** Tenant shall release NASA from, and indemnify NASA against, all claims liabilities, losses, damages, costs and expenses arising out of or related to Tenant's use and occupancy of the Premises, unless the same was caused by the willful misconduct of NASA, its employees, or a NASA contractor.

4.2. **Environmental Compliance and Cleanup:** Agreement must address Tenant's compliance with all applicable Environmental Laws and NASA Policies.

4.3. **Hazardous Material:** Tenant shall not use, store or otherwise handle, or permit any use, storage or other handling of, any hazardous material which is not a Permitted Material on or about the Premises. NASA has no authority to indemnify Tenant against existing conditions.

(or)

NASA and Tenant acknowledge that Tenant may periodically utilized Hazardous Materials in the course of normal business. If possible, a list of the Hazardous Materials which may be utilized shall be provided as an attachment to the Agreement plus risk mitigation plans for ensuring safe use of these materials. Any Hazardous Materials to be brought onto NASA Property requires [XXX] day advance notice from Tenant to NASA, and NASA reserves the right to accept or reject the request. [Note: Check with the Center's First Responders regarding requirements to maintain Material Safety Data Sheets which may be periodically provided to responders.]



4.4. **Compliance with Laws:** Tenant shall comply with all applicable laws, regulations and codes, and all NASA and Center policy directives (NPDs and PDs) and procedural requirements (NPRs and PRs). Furthermore, Tenant shall abide by and at its own expense modify the property if required by any law passed during the term of the lease by any authority having jurisdiction.

4.5. **Insurance Requirements:** During the term of the Lease, Tenant will carry the following insurance coverage at its own cost:

- Worker's Compensation as required by law and Employer's Liability in an amount not less than [XXX];
- Commercial General Liability in an amount not less than [XXX], combined single limit and annual aggregate; and
- If Tenant has hired, owned or non-owned vehicles, Auto Liability Coverage in an amount not less than [XXX].

The Commercial General Liability coverage shall be endorsed to name the U.S. Government, NASA and its directors and employees as additional insured and to waive the insurance company's right of subrogation against NASA. [Note: In certain cases, NASA may request that the Tenant carry property insurance based on the value of the Government property.]

4.6. **Proprietary Information:** NASA and Tenant acknowledge that there will likely be opportunities for collaboration and synergistic discussions between parties which may require exchange of Proprietary Information. Any Proprietary Information should be identified as such in writing prior to sharing; such information shall remain Confidential between the parties.

4.7. **Public Relations Activities:** Tenant and NASA agree that there may be opportunities for other party to release or publicize information associated with Tenant and NASA's activities. Tenant and NASA shall agree in writing to the release of such information by the other party.

4.8. **Release of Information:** Tenant recognizes that any information provided to NASA may be subject to Freedom of Information Act (FOIA) and National Environmental Protection Act (NEPA).



- 4.9. **Liens:** Tenant shall hold NASA harmless against any Liens placed against the Premises. [Note: In certain cases, NASA may require the Tenant to hold payment bonds for major contracted or subcontracted work.]
- 4.10. **Counter-claims:** Tenant shall waive all rights to bring a counterclaim in any action brought by NASA for non-payment of rent or any other summary proceeding thereon.

## 5. Use of NASA logo and property

Below are the items that guide Tenant use of NASA logo and property. These terms will be further described in the Lease.

- 5.1. **Use of NASA Logo:** At no time shall Tenant be allowed to use the NASA Logo without prior written agreement.
- 5.2. **NASA Name and Initials:** Tenant agrees the words "National Aeronautics and Space Administration" and the letters "NASA" will not be used in connection with a product or service in a manner reasonably calculated to convey any impression that such product or service has the authorization, support, sponsorship, or endorsement of NASA, which does not, in fact, exist. Tenant agrees that any proposed public use of the NASA name or initials (including press releases resulting from activities conducted under the Lease and all promotional and advertising use) shall be submitted by Tenant in advance to the NASA Assistant Administrator for Public Affairs or designee ("NASA Public Affairs") for review and approval. Approval by NASA Public Affairs shall be based on applicable law and policy governing the use of the NASA name and initials.
- 5.3. **NASA Emblems:** Use of NASA emblems/devices (i.e., NASA Seal, NASA Insignia, NASA logotype, NASA Program Identifiers, and the NASA Flag) are governed by 14 C.F.R. Part 1221. Tenant agrees that any proposed use of such emblems/devices shall be submitted to NASA Public Affairs for review and approval in accordance with such regulations.
- 5.4. **Release of General Information to the Public:** NASA or Tenant may, consistent with Federal law and the Lease, release general information regarding its own participation in the Lease as desired.
- 5.5. **No NASA Endorsements:** NASA does not endorse or sponsor any commercial product, service, or activity. Tenant agrees that nothing in the Lease will be construed to imply that NASA authorizes supports, endorses, or sponsors any product or service of Tenant



resulting from activities conducted under the Lease, unless expressly provided in writing from a Senior NASA Official.

## 6. Conclusion and declaration of non-binding LOI

- 6.1. **Points of Contact for Negotiation:** The following people are authorized to negotiate for NASA and Tenant:

For NASA:

[XXX]

For Tenant:

[XXX]

- 6.2. **Non-Binding:** This proposal is not a legal contract and is not legally binding on either NASA or Tenant, but is simply an expression of the basis on which NASA is contemplating executing a Lease. There is no duty on either party's part to continue to proceed with this matter, and at any time before executing a Lease, either party can immediately terminate the negotiations. As the information in this letter is preliminary and pre-decisional, both parties agree to keep the terms of this letter and any related discussions confidential until a Lease has been executed.

- 6.3. **Expiration:** Please note that this LOI shall automatically expire at [XXX p.m. on \_\_\_\_, 201\_].

NASA-[Center initials]

Tenant

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## NASA Real Property Non-Binding Elements of LOI for Non-Federal Entities

---



### 3. Terms and Definitions

---

**Premises** - the specific space being leased.

**“As-is”** – without modification.

**Tenant Work** – construction work contemplated to be required to allow Tenant to function in the space.

**Restoration** – returning the space to the condition prior to Tenant occupancy.

**Capital Repair and / or Replacements** – construction work required to the building systems, structure or enclosure and required to be performed by NASA.

**Term** – the start and end date of the lease.

**Base Rent** – the ongoing rental rate, per square foot or in lump sum, required to be paid monthly by the Tenant to the NASA.

**Demand Services** – additional costs which are charged to Tenant by NASA based on usage.

**Assignment** – the ability for a Tenant to “assign” the lease to another entity.

**Termination** – the ability to terminate the lease prior to lease expiration.

**Expiration** – the date the lease “expires” and Tenant is required to vacate.

**Security Deposit** – the cash, letter of credit, or form of guarantee provided by the Tenant to the NASA to ensure that the Tenant abides by the terms of the lease, especially for lease payments and restoration requirements.

**Holdover** – the ability for a Tenant to remain in the space without a current agreement after the lease has expired.